IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2532 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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HARKISHANBHAI V CHAMPANERI - Appellant(s)
Versus
VINODKUMAR N CHAMPANERI & 6 - Defendant(s)

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Appearance :
MR SA DESAI for Appellant(s) : 1,
MR DF AMIN for Defendant(s) : 1,
RULE SERVED for Defendant(s) : 2 - 7.
MR RK MISHRA for Defendant(s) : 2,
MR NR TANDEL for Defendant(s) : 6,
MR PRANAV G DESAI for Defendant(s) : 7,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/08/2006

ORAL JUDGMENT

1. By way of this appeal the appellant has challenged the judgement and order dated 30.04.2001 passed by the Extra Assistant Judge, Navsari, in Misc. Civil (Guardian) Application No. 64 OF 1997 whereby the same was partly allowed.

2. The facts of the case are that the opponent No. 1, material uncle of minor Krishna, filed an application before the District Court, Valsad being Misc. Appl. No.

64 of 1997 praying for reliefs that he should be appointed as guardian of minor Krishna and praying for custody of the child. In the said application opponent No. 1 had alleged that minor Krishna had been staying with him and had thereafter gone to her fathers place. It was also alleged that the applicant was not taking proper care of minor. Various other allegations were also made.

2.1 An application for restraining the applicant from claiming the amounts lying with opponents Nos. 2 to 7 etc. was also preferred. The applicant resisted the application filed by the opponent No. 1 stating that the allegations in the application were not correct and defined the same. It was pointed out that his minor daughter has been taken proper care of. The opponent No. 1 had no right to file the application on various grounds. The other defendants have pointed out before the Court that since the applicant is the nominee of the deceased wife, he is entitled to property of the deceased wife. On 4.1.2001, the opponent No. 1 original applicant gave up his claim for being appointed as guardian of the minor but restricted his claim to administration of the property of the minor.

2.2 The opponent No. 1 has filed another application

Exh. 82 on 4.1.2001 stating that an amount of Rs. 32,587/- has been withdrawn by the present applicant from time to time and he prayed for getting an account of the expenditure. On the said application the Trial Court passed an order directing the present applicant to submit accounts of the amounts received after the death of his wife within a period of six days. Thereafter the Trial Court has passed the final judgement on 30th of April 2001 giving certain directions.

3. Learned advocate for the present appellant has submitted that the Trial Court ought to have appreciated the fact that the applicant herein is the father and natural guardian of his minor daughter and therefore would deal with the property of the minor with “filail” affection. It is submitted that a mere presumption on part of the opponent No. 1 can never result in the passing of the impugned order. He further submitted that the Trial Court ought to have appreciated the fact that the conduct of the opponent No. 1 by giving of purshish Ex. 80 is very much in doubt. It is further submitted that the opponent No. 1 in the said application stated that he was giving up his claim to the custody of the minor and limiting his claim only to the administration of the minors property.

4. Admittedly the appellant has not remarried. He has limited his claim only to the administration of minor's property. The trial court has directed to deposit the amount. In view of the peculiar facts I am of the opinion that interest of justice would be met issuing the following directions:

"The appellant shall be allowed to manage the account However he will not spend any amount and withdraw any amount except for the bonafide requirements and necessity of the minor. He will submit the monthly statement to the court on or before 10th of every month. A copy of such statement shall be given to the present opponent."

5. In the premises aforesaid the appeal is allowed to the aforesaid extent. No order as to costs.

(K.S.JHAVERI, J.)

Suresh*